

March 8, 2007

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 8th day of March, 2007 at 8:00 P.M., and there were

PRESENT: JOHN ABRAHAM, JR., MEMBER

 JAMES PERRY, MEMBER

 RICHARD QUINN, MEMBER

 ARLIE SCHWAN, MEMBER

 ROBERT THILL, MEMBER

 JEFFREY LEHRBACH, CHAIRMAN

ABSENT: WILLIAM MARYNIEWSKI, MEMBER

ALSO PRESENT: JOHANNA M. COLEMAN, TOWN CLERK

 JOHN DUDZIAK, DEPUTY TOWN ATTORNEY

 JEFFREY H. SIMME, BUILDING INSPECTOR

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

PETITION OF AFFORDABLE SENIOR HOUSING OPPORTUNITIES OF NEW YORK, INC:

In the matter of the petition of Affordable Senior Housing Opportunities of New York, Inc., Michael Connors, Agent, 1430 Millersport Highway, Williamsville, New York 14221 for two [2] variances for the purpose of constructing a two [2] story senior citizens residence on property owned by David P. Smith located at 6026 Broadway [north of Broadway and west of Pavement Road], to wit:

- A. A variance from the requirements of Chapter 50, Zoning, Section 13C.(2)(g) of the Code of the Town of Lancaster. The petitioner's plans call for the structure to be constructed wherein six [6] of the structure's eight [8] walls will exceed the maximum length permitted in the Code of the Town of Lancaster, the longest of the walls being four hundred seven feet, three inches [407',3"] in length.

Chapter 50, Zoning, Section 13C.(2)(g) of the Code of the Town of Lancaster restricts the aggregate length of any wall to a maximum length of one hundred seventy six feet [176']. The petitioner, therefore, requests a variance of two hundred thirty one feet, three inches [231',3"] for the longest wall as well as lesser variances for the remaining five [5] walls.

- B. A second variance from the requirements of Chapter 50, Zoning, Section 13C.(2)(g) of the Code of the Town of Lancaster. The petitioner's plans call for seven [7] of the eight [8] walls of the structure to exceed one hundred thirty two feet [132'] without the required 90°, ten [10] foot offset, the longest such section being four hundred seven feet, three inches [407',3"] in length.

Chapter 50, Zoning, Section 13C.(2)(g) of the Code of the Town of Lancaster restricts wall sections without the required offset to one hundred thirty two feet [132'] or less in length. The petitioner, therefore, requests a variance of two hundred seventy five feet, three inches [275',3"] for the longest wall as well as lesser variances for the remaining six [6] walls.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Environment and Planning of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Public Works, Division of Highways of the time and place of this public hearing.

Copy of the response from the Erie County Department of Environment and Planning dated January 18, 2007 and received January 24, 2007.

Copy of the comment letter from Belmont Shelter Corporation dated February 5, 2007 and received February 6, 2007 expressing concerns about water supply and drainage.

PERSONS ADDRESSING THE BOARD

Michael Connors, agent for petitioner 1430 Millersport Highway Williamsville, New York 14221	Proponent
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David P. Smith, property owner 6026 Broadway Lancaster, New York 14086	Proponent
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**IN THE MATTER OF THE PETITION FOR AREA VARIANCES OF AFFORDABLE
SENIOR HOUSING OPPORTUNITIES OF NEW YORK, INC. DATED JANUARY 4,
2007**

THE FOLLOWING RESOLUTION WAS
OFFERED BY MR. THILL, WHO MOVED
ITS ADOPTION, SECONDED BY MR QUINN
TO WIT:

BE IT RESOLVED that the Zoning Board of Appeals of the Town of Lancaster
adopt the following findings with any member **dissenting** to a particular finding noted in that
finding by the clerk:

Factual Findings

That the affidavits of publication and posting presented by the Clerk to the Zoning Board of
Appeals indicated that notice of the public hearing on this matter was duly published and posted
according to law.

[Dissension – None]

That this matter is properly before the Zoning Board of Appeals from a rejection of the Building
and Zoning Inspector of the Town of Lancaster dated January 4, 2007 and an amended rejection
dated February 9, 2007.

[Dissension – None]

That the premises upon which this variance is sought is located within an Agricultural
Residential District (A-R) as set forth in the zoning ordinance and map of the Town of Lancaster
adopted on May 15, 1989, and as amended to date.

[Dissension – None]

That the use sought for the premises namely an affordable senior housing apartment complex **is
not** a permitted use in the Agricultural Residential District (A-R) as set forth in the zoning
ordinance and map of the Town of Lancaster adopted on May 15, 1989, and as amended to date.

[Dissension – None]

That the present use of the premises upon which this variance is sought is vacant land.

[Dissension – None]

That the Town Attorney by letter dated February 21, 2007 informed the Zoning Board that there
is a need for a zoning change on this property and that an application for a rezone has been
submitted by the developer to the Town Board and that there are a number of environmental
issues which have to be addressed as they have been identified by New York State Department of
Environmental Conservation and Erie County Department of Environment and Planning.

[Dissension – None]

That the application for rezone referred to in the letter of February 21, 2007 from the Town
Attorney is for a change of the present Agricultural Residential District (A-R) zoning to a
proposed Multifamily Residential District Four (MFR-4) zoning.

[Dissension – None]

That a review of the zoning map of the Town of Lancaster discloses that the closest Multifamily
Residential District Four (MFR-4) zoning to this proposed site is located one [1] mile west of the
proposed site near the intersection of Broadway and Bowen Road namely the Bell Tower Village
Apartments and the Grambo Drive Senior Apartments.

[Dissension – None]

That the Town Attorney by letter dated February 21, 2007 informed the Zoning Board that due to
the fact that the variance sought is exceptional in nature given the building wall length as it
relates to the building code requirements of the Town, felt it might be worthwhile for the Zoning
Board of Appeals to hear the variance petition even prior to the zoning issue being determined.

[Dissension – None]

That the petitioner plans to develop the site by construction of two [2] twin senior apartment buildings with each building containing fifty three [53] one bedroom apartments and seventy [70] two bedroom apartments.

[Dissension – None]

That this board in their assessment of the impact of this project on the character of the neighborhood have made note of the existence of the proposed future twin apartment buildings and that additional variances will be necessary for construction of the second twin apartment building and have evaluated the impact of that building in their consideration of the variances requested herein for the first of these two buildings.

[Dissension – Mr. Lehrbach]

That the petitioner is not the owner of the premises for which this variance is sought.

[Dissension – None]

That David P. Smith, owner of the premises upon which this variance is sought designated Affordable Senior Housing Opportunities of New York, Inc. to act as his representative in any and all proceedings before the Zoning Board of Appeals of the Town of Lancaster in this matter.

[Dissension – None]

That the petitioner testified that no feasible alternative exists but for the granting of the area variance and that the proposed project will be aborted if the requested area variance is denied.

[Dissension – None]

That all property owners of record of adjoining properties within 100 feet of the petitioners' premises were notified of the February 8, 2007 and March 8, 2007 Zoning Board hearings and variance request.

[Dissension – None]

That the premises upon which this variance is sought is located on the west side of Pavement Road within the Town of Lancaster just north of the intersection of Broadway and Pavement Road.

[Dissension – None]

That Pavement Road is an Erie County highway and pursuant to section 239m of the General Municipal Law a zoning coordination referral was sent to the Erie County Department of Environment and Planning in this matter by the Town Clerk.

[Dissension – None]

That the Erie County Department of Planning by Zoning Referral ZR-1, ECDEP (Rev.12/95) dated January 18, 2007 made no recommendation on this matter but commented as follows:

- The proposed action should be considered part of the on-going review of the rezoning (Type I action) subject to State Environmental Quality Review (SEQR).
- The variances requested are major changes in the requirements of the Multi-family Residential District 4 (MFR-4) of the Town zoning ordinance. A concern would be the establishment of a precedent not in character with Lancaster development. The scale/mass of building in a rural suburban neighborhood is out of community character.
- Based on county experience with elderly housing projects, the size of this development, 246 units, far exceeds the typical 100 unit projects assisted with federal and state supported programs. That many units without nearby commercial supporting services or public transportation may be problematic, not only to the residents, but also to the community.

[Dissension – None]

That the character of the neighborhood is as follows:

Pavement Road
[Front yard for site]

- Pavement Road from Broadway to Erie Street is mostly single family residential homes on large lots.
- Directly opposite the proposed two [2] twin senior apartment buildings is Country Club estates (Country Club Gardens Subdivision), a developing residential home subdivision containing fifty five [55] home sites.
- Directly to the rear of the proposed two [2] twin senior apartment buildings is the Colonial Meadows. This is a Belmont Shelter facility with three [3] two story thirty six foot [36'] by seventy two foot [72'] eight [8] unit apartments for low income assisted living. This property is spot zoned Multi-family Residential District 3 (MFR-3).
- Directly south of the proposed site at the corner of Pavement Road and Broadway is the home and property of David Smith, the owner of the proposed development site. This entire site was originally a farm. The corner area where Mr. Smith resides appears to be used as a dwelling, with barns, garages and storage of contractor's equipment. Mr. Smith's property is zoned General Business (GB).

Broadway
[Approximately 250-300 feet south of the site]

- The Lancaster County Club, an 18 hole golf course is located approximately 500 feet south of the premises at the intersection of Pavement Road and Broadway.
- West of the Lancaster Country club is a large sprawling complex of senior assisted living apartments, an assisted living nursing home and full care nursing facility locally known as "Greenfields". This site is a spot zone Multifamily Residential District Three (MFR-3). **The board notes** that on December 13, 1990 the Zoning Board of Appeals granted to Greenfields total maximum length of walls variances for the construction of the walls of this complex namely; 12 foot variances [6.82%] from the code requirement of 176 feet to allow construction of 188 foot long walls.
- The remainder of Broadway near the site is a mix of single family residential, neighborhood business and general business.

[Dissension – None]

That the area relief sought for maximum overall wall length is substantial, namely 131%.

[Dissension – None]

That the area relief sought for maximum section wall length is substantial, namely 82%.

[Dissension – None]

That the petitioner arranged for the members of this board to view three [3] senior buildings in the western New York area that the petitioner's company had recently completed and that the following board members viewed all or some of these facilities:

- Mr. Thill – visited West Seneca, Lackawanna, and North Tonawanda.
- Mr. Abraham – visited West Seneca
- Mr. Maryniewski - n/a
- Mr. Quinn – none
- Mr. Perry – visited West Seneca
- Mr. Schwan – visited West Seneca
- Mr. Lehrbach - visited West Seneca

[Dissension – None]

That the Seneca Point Senior Housing Apartments are constructed in the shape of an "X" and contain 116 apartments. It is located 800 feet in from Orchard Park Road and the neighboring properties are shielded from the apartments by mature forest trees with the exception of seven [7] homes on Brook Lane south of the complex. The length of the eight [8] long uninterrupted walls of these apartments range in length from two hundred five feet [205'] to a maximum of two hundred fifty seven feet [257'].

That the proposed Lancaster Pavement Road senior housing site is proposed to be built on seventeen point ninety-six acres [17.96 acres], with two hundred forty five [245] apartments with four [4] walls exceeding four hundred five feet [405'] in length. The apartment buildings are set back approximately seventy five to one hundred feet [75'-100'] from Pavement Road and adjoining properties and are shielded from the road and those properties by a proposed planting of twenty four [24] deciduous trees and twenty six [26] pine trees within the required front, side and rear yard green space areas. **It is noted** that these proposed plantings are but a fraction of the matured forest area surrounding the Seneca Point Housing Apartment complex that was viewed by board members.

That pursuant to the Town of Lancaster Zoning Map, if the subject property is rezoned, that within a one half mile radius of the subject property, there will be seven different types of zoning, including General Business (GB), Residential Commercial Office District (RCO), Multi-family Residential District 3 (MFR-3), Commercial and Motor Service District (CMS), Residential District 1 (R-1), Agricultural Residential District (A-R) and Multi-family Residential District 4 (MFR-4) indicating a mixed use area.

[Dissension – None]

That Mr. Schwan viewed various other senior housing complexes which are owned by the petitioner on the petitioner's website.

[Dissension – None]

That the developer has represented to the Zoning Board of Appeals that they currently own and operate three housing for seniors capable of independent living.

[Dissension – None]

That there were no persons who spoke in opposition to the project at either hearing.

[Dissension – None]

That the Planning Board in its written recommendation to the Town Board dated December 6, 2006 has recommended approval of the rezone application citing no conditions nor comments.

[Dissension – None]

Conclusive Findings

That an undesirable change **will be** produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance relief sought.

[Dissension – Mr. Lehrbach]

That the petitioner has not provided this board with any credible engineering or financial analysis or reports relating to a review of any alternative plans or layouts investigated by the petitioner other than a short letter from the petitioner. That this board concludes that feasible alternatives may indeed exist that have not been investigated by the petitioner other than the area variance relief sought.

[Dissension – Mr. Lehrbach]

In his dissension, Mr. Lehrbach noted the developer's extensive experience in planning and construction of senior housing.

That the area relief sought **is very substantial**, namely

- 131% variances for the two [2] four hundred seven foot [407'] walls.
- 82% variances for seven [7] of the proposed eight [8] walls.

[Dissension – None]

That the relief sought **is self** created. The petitioner is not the owner of the property. The petitioner has not provided to this board any evidence of the relation between the owner of the property David P. Smith and the petitioner.

[Dissension – None]

That the relief sought **is not** in harmony with the general purpose and intent of Chapter 50, Zoning of the Code of the Town of Lancaster and **will be** injurious to the neighborhood or impair the appropriate use or development of adjacent property and **will be** detrimental to the public welfare.

[Dissension – Mr. Lehrbach, Mr. Quinn, Mr. Abraham]

That, in view of the position enunciated by the petitioner namely: “if the variances requested are

not granted we will abort this project” the area variance relief sought, if granted, is the minimum variance acceptable to the petitioner necessary to afford relief.

[Dissension – None]

That this Zoning requirement has no direct bearing on the health, safety and welfare of the residents of the Town of Lancaster and the measurements dictated by the Zoning Code have an unclear origination.

[Dissension – Mr. Quinn, Mr. Thill]

The question of the adoption of the foregoing findings was duly put to a vote on roll call, which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. PERRY	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

March 8, 2007

**Zoning Board of Appeals
Town of Lancaster New York**

Decision on Grant of Variance

**In the Matter of the petition of Affordable Senior Housing Opportunities of New York,
Inc., dated January 4, 2007**

THE FOLLOWING RESOLUTION WAS
OFFERED BY MR. THILL WHO MOVED
ITS ADOPTION, SECONDED BY
MR. LEHRBACH TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has taken evidence and testimony at a public hearing held before it on February 8, 2007 and March 8, 2007 for two [2] area variances from the provisions of Chapter 50, Zoning, Section 13 C(2)(g) of the Code of the Town of Lancaster, and

WHEREAS, the petitioner seeks relief from these provisions for the purpose of constructing the first of two [2] proposed twin senior housing apartment buildings on the premises for which this variance is sought with each apartment building containing fifty three [53] one bedroom apartments and seventy [70] two bedroom apartments with a total of two hundred forty six [246] apartments for the entire complex, and

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has adopted findings in this matter at a public meeting held on the 8th day of March 2007, and

WHEREAS, all persons desiring to be heard at the public hearing on this matter have been heard, and

WHEREAS, the Zoning Board of Appeals in their detailed examination and consideration of the facts in this matter has considered:

- The benefit to the applicant if the variance is granted, and
- The detriment to the health, safety and general welfare of the neighborhood or community that would occur if the variance were to be granted,

**NOW, THEREFORE, BE IT
RESOLVED** as follows:

BE IT RESOLVED, that the petitioner, Affordable Senior Housing Opportunities of New York, Inc. **be granted** the following variances from the Zoning Board of Appeals of the Town of Lancaster, to wit:

Two [2] variances from the requirements of Chapter 50, Zoning, Section 13C(2)(g) of the Code of the Town of Lancaster for the purpose of constructing the first of two [2] twin senior apartment buildings containing fifty three [53] one bedroom apartments and seventy [70] two bedroom apartments on the premises for which this variance is sought, and

BE IT FURTHER

RESOLVED, that the variances granted herein are specifically granted for the first and only the first of the two [2] proposed twin senior apartment buildings on the premises, and

BE IT FURTHER

RESOLVED, that the variances granted herein are granted in strict conformance with the application for an area variance submitted by the petitioner dated January 4, 2007 and filed in the Office of the Town Clerk with all exhibits, drawings and date attached and in accordance with a Conceptual Site Plan and a Conceptual Landscaping Plan – entitled “Pavement Road Senior Housing Clover Construction Management, Inc.” prepared by C & S Engineers dated November 20, 2006 and Drawings A-1,2,3 and 9 prepared by Silvestri Architects PC Dated November 17, 2006.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

MR. ABRAHAM	VOTED NO
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED NO
MR. PERRY	VOTED YES
MR. SCHWAN	VOTED NO
MR. THILL	VOTED NO
MR. LEHRBACH	VOTED YES

March 8, 2007

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was adjourned at 9:45 P.M.

Signed _____
Johanna M. Coleman, Town Clerk and
Clerk, Zoning Board of Appeals
Dated: March 8, 2007